

continuing qualification of the organization under section 501(c)(3); (ii) to determine whether the organization qualifies as one, contributions to which are deductible under section 170, 545, 556, 642, 2055, 2106, or 2522; or (iii) to determine whether the organization is a church or convention or association of churches subject to the provisions of part III of subchapter F of chapter 1. The requirements of subparagraph (2) of this paragraph that the Regional Commissioner give notice prior to examination of the books of account of an organization do not apply to an examination of the religious activities of the organization for any purpose described in this subparagraph. Once it has been determined that the organization is a church or convention or association of churches, no further examination of its religious activities may be made in connection with determining its liability, if any, for unrelated business income tax.

(4) *Effective date.* The provisions of this paragraph shall apply to audits and examinations of taxable years beginning after December 31, 1969.

(j) *Effective date.* Paragraphs (a) through (g) of this section, inclusive, are effective for examinations scheduled after April 2, 1993.

(Secs. 1441(c)(4) (80 Stat. 1553; 26 U.S.C. 1441(c)(4)), 3401(a)(6) (80 Stat. 1554; 26 U.S.C. 3401(a)(6)), and 7805 (68A Stat. 917; 26 U.S.C. 7805), Internal Revenue Code of 1954)

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7146, 36 FR 20599, Oct. 27, 1971; T.D. 7977, 49 FR 36836, Sept. 20, 1984; T.D. 8297, 55 FR 12346, Apr. 3, 1990; T.D. 8469, 58 FR 17519, Apr. 5, 1993]

#### **§ 301.7606-1 Entry of premises for examination of taxable objects.**

Any officer or employee of the Internal Revenue Service may, in the performance of his duty, enter in the daytime any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects and also enter at night any such building or place, while open, for a similar purpose.

[T.D. 7297, 38 FR 34804, Dec. 19, 1973]

#### **§ 301.7609-1 Special procedures for third-party summonses.**

(a) *In general.* Section 7609 requires the Internal Revenue Service to follow special procedures when summoning the records of persons defined by section 7609(a)(3) as “third-party recordkeepers.” Under these special procedures, the person about whom information is being gathered must be notified in advance in many cases. If the person about whom information is being gathered has been given notice, that person has the right to institute, until and including the 20th day following the day such notice was served on or mailed to such notified person, a proceeding to quash the summons. During the time the validity of the summons is being litigated, the statutes of limitations are suspended under section 7609(e). Section 7609 does not restrict the authority under section 7602 (or under any other provision of law) to examine records and witnesses without serving a summons and without giving notice of an examination. Sections 301.7609-1 through 301.7609-5 relate to section 7609; § 301.7609-2, discusses matters under sections 7609(a)(3) and 7609(i) relating to third-party recordkeepers; § 301.7609-3 discusses matters under section 7609(b), relating to intervention rights; § 301.7609-4 and the institution of a proceeding to quash; § 301.7609-4 discusses matters under section 7609(c), relating to summonses excepted from the section 7609 procedures; and § 301.7609-5 discusses matters under section 7609(e), relating to the suspension of the statute of limitations.

(b) *Effective dates.* This section applies to summonses served after December 31, 1982. For the rules applicable to summonses issued on or after March 1, 1977 and served before January 1, 1983, see 26 CFR 301.7609-1 (revised as of April 1, 1984).

[T.D. 8091, 51 FR 23054, June 25, 1986]

#### **§ 301.7609-2 Third-party recordkeepers.**

(a) *Definitions—(1) Accountant.* A person is an “accountant” under section 7609(a)(3)(F) for purposes of determining whether that person is a third-

party recordkeeper if the person is registered, licensed, or certified under State law as an accountant.

(2) *Attorney.* A person is an “attorney” under section 7609(a)(3)(E) for purposes of determining whether that person is a third-party recordkeeper if the person is admitted to the bar of a State.

(3) *Credit cards*—(i) *Person extending credit through credit cards.* The term “person extending credit through the use of credit cards or similar devices” under section 7609(a)(3)(C) generally includes any person who issues a credit card. It does not include a seller of goods or services that honors credit cards issued by other parties but does not extend credit on the basis of credit cards or similar devices issued by itself.

(ii) *Similar devices to credit cards.* An object is a “similar device” to a credit card under section 7609(a)(3)(C) only if it is physical in nature, such as a coupon book, a charge plate, or a letter of credit. Thus, a person who extends credit by requiring credit customers to sign sales slips without requiring use of physical objects issued by that person is not a third-party recordkeeping under section 7609(a)(3)(C).

(b) *When third-party recordkeeper status arises*—(1) *In general.* A person is a “third-party recordkeeper” with respect to a given set of records only if the person made or kept the records in the person’s capacity as a third-party recordkeeper. Thus, for instance, an accountant is not a third-party recordkeeper (by reason of being an accountant) with respect to the accountant’s records of a sale of property by the accountant to another person. Similarly, a credit card issuer is not a third-party recordkeeper (by reason of being a person extending credit through the use of credit cards or similar devices) with respect to—

(i) Records relating to noncredit card transactions, such as a cash sale by the issuer to a holder of the issuer’s credit card; or

(ii) Records relating to transactions involving the use of another issuer’s credit card.

(2) *Examples.* The rules of paragraph (b)(1) of this section may be illustrated by the following examples:

*Example 1.* V issues a credit card (the V card) that is honored by R, a retailer. When using the V card, C signs a sales slip in triplicate. C, R, and V each retain one copy. Only the copy held by V is held by a third-party recordkeeper under section 7609 (a)(3), even though R may issue its own credit card.

*Example 2.* Assume the same facts as in example 1, except R does issue its own credit card to C (the R card). When C makes a credit purchase from R using the R card, C signs a sales slip in duplicate. C and R each retain one copy. Because R keeps the copy in its capacity as credit card issuer, as well as in its capacity as seller, it is a third-party recordkeeper under section 7609 (a)(3) with respect to that copy.

(c) *Duty of third-party recordkeeper*—

(1) *In general.* Upon receipt of a summons, the third-party recordkeeper (“recordkeeper”) must begin to assemble the summoned records. The recordkeeper must be prepared to produce the summoned records on the date which the summons states the records are to be examined regardless of the institution of anticipated institution of a proceeding to quash or the recordkeeper’s intervention (as allowed under section 7609(b)(2)(C)) into a proceeding to quash.

(2) *Disclosing recordkeepers not liable*—

(i) *In general.* A recordkeeper, or an agent or employee thereof, who makes a disclosure of records as required by this section, in good faith reliance on the certificate of the Secretary (as defined in paragraph (c)(2)(ii) of this section) or an order of a court requiring production of records, will not be liable for such disclosure to any customer, or to any party with respect to whose tax liability the summons was issued, or to any other person.

(ii) *Certificate of the Secretary.* The Secretary may issue to the recordkeeper a certificate stating both:

(A) That the 20-day period, within which a notified person may institute a proceeding to quash the summons, has expired; and

(B) That no proceeding has been properly instituted within that period.

The Secretary may also issue a certificate to the recordkeeper if the taxpayer, with respect to whose tax liability the summons was issued, expressly consents to the examination of the records summoned.

(3) *Reimbursement of costs.* Record-keepers may be entitled to reimbursement of their costs of assembling and preparing to produce summoned records, to the extent allowed by section 7610, even if the summons ultimately is not enforced.

(d) *Effective dates.* This section, with the exception of paragraph (c), applies generally to all summonses issued on or after March 1, 1977. Paragraph (c) applies only to summonses served after December 31, 1982.

(Secs. 7610(a) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 7610(a) and 7805))

[T.D. 7899, 48 FR 32772, July 19, 1983, as amended by T.D. 8091, 51 FR 23054, June 25, 1986]

**§ 301.7609-3 Right to intervene; right to institute a proceeding to quash.**

(a) *Notified person.* Under section 7609(a), the Internal Revenue Service must give a notice of summons to any person, other than the person summoned, who is identified in the description of the books and records contained in the summons in order that such person may contest the right of the Service to examine the summoned records by instituting a proceeding to quash the summons. Thus, if the Service issues a summons to a bank requesting checking account records of more than one person all of whom are identified in the description of the records contained in the summons, then all such persons are notified persons entitled to notice under section 7609(a). Therefore, if the Service requests the records of a joint bank account of A and B both of whom are named in the summons, then both A and B are notified persons entitled to notice under section 7609(a).

(b) *Right to institute a proceeding to quash—(1) In general.* Section 7609(b) grants a notified person the right to institute a proceeding to quash the summons in the United States district court for the district within which the person summoned resides or is found. Jurisdiction of the court is based on section 7609(h). The act of filing a petition in district court does not in and of itself institute a proceeding to quash under section 7609(b)(2). Rather, the filing of the petition must be coupled with notice as required by section 7609(b)(2)(B).

(2) *Elements of institution of a proceeding to quash.* In order to institute a proceeding to quash a summons the notified person (or the notified person's agent, nominee, or other person acting under the direction or control of the notified person) must, not later than the 20th day following the day the notice of the summons was served on or mailed to such notified person:

(i) File a petition to quash in the name of the notified person in a district court having jurisdiction,

(ii) Notify the Service by sending a copy of that petition by registered or certified mail to the Service employee and office designated to receive the copy in the notice of summons that was given to the notified person, and

(iii) Notify the recordkeeper by sending to that recordkeeper by registered or certified mail a copy of the petition.

Failure to give timely notice to either the summoned party or the Service in the manner described in this paragraph means that the notified person has failed to institute a proceeding to quash and the district court has no jurisdiction to hear the proceeding. Thus, for example, if the notified person mails a copy of the petition to the summoned person but not to the designated Service employee and office, the notified person has failed to institute a proceeding to quash. Similarly, if the notified person mails a copy of such petition to the summoned person but, instead of sending a copy of the petition by registered or certified mail to the designated employee and office, the notified person gives the designated employee and office the petition by some other means, the notified person has failed to institute a proceeding to quash.

(3) *Failure to institute a proceeding to quash.* If the notified person fails to institute a proceeding to quash within 20 days following the day the notice of the summons was served on or mailed to such notified person, the Service may examine the summoned records following the 23rd day after notice of the summons was served on or mailed to the notified person (see section 7609(d)(1)).

(c) *Presumption no notice has been mailed.* Section 7609(b)(2)(B) permits a